IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3218 OF 2004

Mahesh Ranka ... Applicant

versus

State of Maharashtra & anr. ... Respondents

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Mr. Subhash Jha with Mr. Gaurav Agarwal and Miss Geeta Hatkar, i/by Law Global, for the Applicant.

Mr. A.H. H. Ponda with Ms. Anjana K. Baxi, for Respondent No. 2.

Mr. V.B. Konde Deshmukh, A.P.P., for the State.

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CORAM : A.M.KHANWILKAR,J.

28th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record. This application takes exception to the order passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivli, Mumbai in CR.No. 119/2004 dated 8th July 2004 enlarging the Respondent No. 2 on bail. The offence as registered is one under section 420,

467, 468, 471 read with section 34 of the Indian Penal Code. Although the offence under section 467 of the I.P.C. is punishable with imprisonment for life, the Magistrate has proceeded to grant bail on the reasoning that there is no possibility of awarding life imprisonment for such offence. Grievance made before this Court is that the Magistrate had no jurisdiction to grant bail in connection with offences, which included offence punishable with imprisonment for life and that too without recording a clear finding negativating the existence of reasonable ground for believing that the accused is guilty of an offence punishable with the sentence of death or imprisonment of life as is required in view of the exposition of the Apex Court in the case of Pralhad Singh Bhati v. N.C.T., Delhi and another, reported in AIR 2001 S.C. 1444; Only on recording such finding, the Magistrate would assume jurisdiction to release the accused involved in such offence on bail in exercise of powers under section 437 of the Code. There is substance in the grievance made on behalf of the Applicant Complainant. The order as passed by the Magistrate, although makes reference to the fact that the offence complained

of is one under section 467 of the I.P.C., but proceeds to observe that there is no possibility of awarding life imprisonment in such offences. That cannot be the basis for assuming jurisdiction to release such accused on bail under section 437 of the Code. Recently, I had occasion to examine this aspect in the case of Mr. Virendra Singh A. Chandok v. The State of Maharashtra & ors., Criminal Application No. 3375 of 2004 decided on 28th September 2004. In my opinion, the order as passed by the Court below is obviously without jurisdiction and will have to be set aside. For the Magistrate can be said to have assumed jurisdiction under section 437 of the Code only upon recording the finding as referred to above.

. In the circumstances, the order impugned in this application is set aside, with liberty to the Respondent No. 2 to move the concerned Magistrate or the appropriate Court, as may be advised, for relief of bail, which application will be considered on its own merits in accordance with law. All other contentions raised in the present application at the instance of the Applicant herein (Complainant) are left

open to be considered at the appropriate stage either by the said Court or by this Court if and when occasion arises.

. Accordingly, this application succeeds on the above terms. Respondent No. 2 is, however, granted one week’s time to surrender before the concerned Court to enable him to take recourse to the appropriate remedy as may be permissible by law.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)